UNDER SECRETARY OF DEFENSE



4000 DEFENSE PENTAGON WASHINGTON, D.C. 20301-4000

FOR: DIRECTOR, ADMINISTRATION AND MANAGEMENT

FROM: Clifford L. Stanley, Under Secretary of Defense (Personnel and Rearliness) 3/29/2011

SUBJECT: Charter Renewal for the Board of Regents of the Uniformed Services University of the Health Sciences (USUHS)

- The present charter for the USUHS Board of Regents (TAB A) requires changes to ensure that it conforms with Title 10 of the United States Code as well as current Department of Defense policies and requirements.
- A revised charter (TAB B) is the result of review and deliberation by the Designated Federal Officer for the USUHS Board of Regents and the USUHS General Counsel. Substantive changes between the current and proposed charters are identified and justified at TAB C.
 - The USUHS President and the Assistant Secretary of Defense for Health Affairs concur with the changes.
- A memorandum explaining the need for the USUHS Board of Regents, why its functions cannot be performed by USUHS, and how USUHS and the Office of the Assistant Secretary of Defense for Health Affairs ensure membership is "fairly balanced" is at TAB D.
- An extract from DoD Instruction 5105.04 concerning charter renewal and committee membership is found at TAB E.

RECOMMENDATION: That the Director of Administration and Management initiate necessary actions to approve, publish, and release the draft revised charter as the 2011 charter for the Board of Regents of the Uniformed Services University of the Health Sciences by initialing.

Approve	Disapprove	
COORDINAT	TON: TAB F	
Attachments: As stated		

Prepared by: J. Taylor, Designated Federal Officer, USUHS BOR, 301-295-3066

CHARTER BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

- Committee's Official Designation: The Committee shall be known as the Board of Regents of the Uniformed Services University of the Health Sciences (hereafter referred to as the Board of Regents).
- Authority: The Secretary of Defense, pursuant to 10 U.S.C. § 2113, the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR § 102-3.50(a) established the Board or Regents.
- Objectives and Scope of Activities: The Board of Regents shall assist the Secretary of Defense in an advisory capacity in carrying out the Secretary's responsibility to conduct the business of the Uniformed Services University of the Health Sciences (hereafter referred to as the University).
- Description of <u>Duties</u>: The Board of Regents shall provide advice and recommendations on academic and administrative matters critical to the full accreditation and successful operation of the University.
 - The Under Secretary of Defense for Personnel and Readiness or designee as determined by DoD policy, is authorized to act upon the advice of the Board of Regents.
- Agency or Official to Whom the Committee Reports: The Board shall report to the Secretary of Defense through the Under Secretary of Defense for Personnel and Readiness.
- Support: The Department of Defense, through the University, shall provide support as deemed necessary for performance of the Board of Regents functions, and shall ensure compliance with the requirements of the Federal Advisory Committee Act of 1972 and the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b).
 - Additional information and assistance, as required, may be obtained from other DoD Components with contracting authority, support contractors, including DoD Federally Funded Research and Development Centers for studies and analysis support.
- 7. Estimated Annual Operating Costs and Staff Years: It is estimated that the annual operating costs, to include travel costs and meeting and contract support is approximately \$250,000.00. The estimated annual personnel costs to the Department of Defense are 2.0 full-time equivalents (FTE).

- 8. <u>Designated Federal Officer</u>: The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures.
 - In addition, the Designated Federal Officer is required to be in attendance at all meetings, however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.
- Estimated Number and Frequency of Meetings: The Board or Regents shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairman and the president of the University. The estimated number of meetings is four per year.
- 10. <u>Duration</u>: Pursuant to 10 U.S.C. § 2113a, the need for this advisory function is on a continuing basis, however, it is subject to renewal every two years
- 11. <u>Termination</u>: The Board of Regents shall terminate upon completion of its mission or two years from the date this charter is filed, whichever is sooner, unless the Secretary of Defense or designee extends it.
- 12. Membership and Designation: Pursuant to 10 U.S.C. § 2113a, the Board of Regents is composed of fifteen members.
 - Nine persons outstanding in the field of health care, higher education administration, or public policy shall be appointed from civilian life by the Secretary of Defense;
 - The Secretary of Defense, or his designee, who shall be an ex officio member;
 - The surgeons general of the Uniformed Services, who shall be ex officio members;
 - The President of the University, who shall be a non-voting ex officio member.

The terms of office for each member of the Board (other than ex officio members) shall be six years except that:

- Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and
- Any member whose term of office has expired shall continue to serve until his successor is appointed

One of the appointed members of the Board shall be designated as Chairman by the Secretary of Defense and shall be the presiding officer of the Board.

The Board members shall be appointed by the Secretary of Defense, and their appointments will be renewed on an annual basis. Those members, who are not full-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. § 3109, and serve as special government employees. Pursuant to 10 U.S.C. § 2113, these special government employees shall be entitled to receive compensation at a rate fixed by the Secretary of Defense, in addition to travel expenses and per diem while serving away from their place of residence.

13. <u>Subcommittees</u>: With DoD approval, the Board of Regents is authorized to establish subcommittees or working groups, as necessary and consistent with its mission and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. § 552B, as amended), and other appropriate federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board of Regents, and shall report all their recommendations and advice to the Board of Regents for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board of Regents nor can they report directly to the Department of Defense or any federal officers or employees who are not Board of Regents members.

14. <u>Recordkeeping</u>: The records of the Board of Regents and its subcommittees shall be handled according to section 2, General Record Schedule 26 and appropriate Department of Defense policies and procedures. These records shall be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552, as amended).

15. Filing Date: April 4, 2009

16. Modified: January 5, 2010

CHARTER BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

- Committee's Official Designation: The Committee shall be known as the Board of Regents of the Uniformed Services University of the Health Sciences (hereafter referred to as "the Board").
- 2. Authority: The Secretary of Defense, pursuant to 10 U.S.C. § 2113a, the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix), and 41 CFR § 102-3.50(a) established the Board.
- Objectives and Scope of Activities: The Board shall assist the Secretary of Defense in an advisory capacity in carrying out the Secretary's responsibility to conduct the business of the Uniformed Services University of the Health Sciences (hereafter referred to as "the University"), as set out in (4) below.
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 - The Under Secretary of Defense for Personnel and Readiness may act upon the Board's advice and recommendations.
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- 6. Support: The Department of Defense, through the University, shall provide support as deemed necessary for performance of the Board functions, and shall ensure compliance with the requirements of the Federal Advisory Committee Act of 1972 and the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b).
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- 10. <u>Duration</u>: Pursuant to 10 U.S.C. § 2113a, the need for this advisory function is on a continuing basis; however, it is subject to renewal every two years.
- 11. <u>Termination</u>: The Board shall terminate upon completion of its mission or two years from the date this charter is filed, whichever is sooner, unless the Secretary of Defense or designee extends it.
- 12. Membership and Designation: Pursuant to 10 U.S.C. § 2113a(b), the Board is composed of no more than fifteen members which shall include:
 - Nine persons outstanding in the field of health care, higher education administration, or public policy shall be appointed from civilian life by the Secretary of Defense;
 - b. The Secretary of Defense, or his designee, who shall be an ex officio member;
 - The surgeons general of the Uniformed Services, who shall be ex officio members;
 - d. The President of the University, who shall be a non-voting ex officio member.

The terms of office for each member of the Board (other than ex officio members) shall be six years except that:

- Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and
- Any member whose term of office has expired shall continue to serve until his successor is appointed.

One of the appointed members of the Board shall be designated as Chairman by the Secretary of Defense and shall be the presiding officer of the Board.

Board members that are not ex officio members shall be appointed by the Secretary of Defense. Those members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts consultants under the authority of 5 U.S.C. § 3109, and serve as special government employees. Pursuant to 10 U.S.C. § 2113a(c) and (e), these special government employees shall serve a term of service of six years and shall be entitled to receive compensation at a rate fixed by the Secretary of Defense, in addition to travel expenses and per diem while serving away from their place of residence.

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Such subcommittees shall not work independently of the chartered **Boa**rd, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make recommendations on behalf of the chartered Board, nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members who are not **Board members** shall be appointed in the same manner as the Board members. **Such** individuals, if not full-time or part-time government employees, shall be appointed to serve as experts or under the authority of 5 U.S.C. § 3109, and serve as **special** government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis.

- 14. <u>Recordkeeping</u>: The records of the Board and its subcommittees shall be handled according to section 2, General Record Schedule 26 and appropriate Department of Defense policies and procedures. These records shall be available for public inspection and copying, consistent with the Freedom of Information Act of 1966 (5 U.S.C. § 552), as amended.
- 15. Filing Date:

Board of Regents of the Uniformed Services University of the Health Sciences

Charter Renewal: Substantive Changes and Justifications October 19, 2010

- Paragraph 2, Authority
 - Change: Changed to indicate that the Board of Regents is established by law.
 - Justification: Replacement language is consistent with language in the Charter that predated the January 2010 modifications.
- Paragraph 9, Estimated Number and Frequency of Meetings
 - O Change: Changed to indicate that the Board of Regents must meet at least once a quarter, in accordance with 10 U.S.C. § 2113a.
 - O Justification: Replacement language is necessary because of a 2008 change in 10 U.S.C. § 2113a to this effect.
- Paragraph 12, Membership and Designation
 - Change: The provision for renewal of appointments to the Board of Regents on an annual basis by the Secretary of Defense is deleted.
 - O Justification: The deleted provision is inconsistent with the requirement as stated in 10 U.S.C. § 2113a for six year terms for appointed members and automatic appointment of ex officio members.
- The draft charter also includes minor changes and edits.

<u>Additional Note</u>: Paragraph 7, Estimated Annual Operating Costs and Staff Years One-time charges for the Board of Regents Academic Review Subcommittee support as well as assistance for a five-year review of the university president will increase estimated operating costs in FY 2011 by \$150,000.

Board of Regents of the Uniformed Services University of the Health Sciences

Committee Justification and Membership Criteria

In accordance with Title 41 Code of Federal Regulations, Part 102-3.50(a), and pursuant to 10 U.S.C. § 2113a, this memorandum requests renewal of the charter for the Board of Regents of the Uniformed Services University of the Health Sciences (hereafter referred to as the Board of Regents). The Board of Regents assists the Secretary of Defense in an advisory capacity regarding the operation of the University, ensuring that its business is conducted in the best tradition of academia and in compliance with all appropriate accreditation authorities.

The University is accredited at the institutional level by the Middle States Commission on Higher Education. Seventeen other professional organizations accredit the University's schools, programs and facilities. An independent Board of Regents recommending actions concerning new programs, the appointment of faculty, institutional planning and the awarding of degrees is requisite to accreditation in many instances.

By Federal statute, nine members of the Board of Regents are civilians distinguished in the fields of health care, higher education administration, or public policy. There are also six ex officio members: the Secretary of Defense (or his designee); the Surgeons General of the Army, Navy and Air Force; and the Surgeon General of the United States. The University President is an ex officio (but non-voting) member. The Board's composition provides a broad mix of military and civilian perspectives as well as clinical and academic experience. Appointed Regents have been carefully selected to ensure a balanced and well qualified membership.



Department of Defense INSTRUCTION

NUMBER 5105.04 August 6, 2007

DA&M

SUBJECT: Department of Defense Federal Advisory Committee Management Program

- References: (a) DoD Directive 5105.4, "Department of Defense Federal Advisory Committee Management Program," February 10, 2003 (hereby canceled)
 - (b) Acting Deputy Secretary of Defense Memorandum, "DoD Directives Review - Phase II," July 13, 2005
 - (c) DoD Directive 5105.53, "Director of Administration and Management," November 23, 1998
 - (d) Title 41, Code of Federal Regulations, Sections 102-3.5 through 102-3.185, "Federal Advisory Committee Management"
 - (e) through (y), see Enclosure 1

1. PURPOSE

This Instruction:

- 1.1. Reissues Reference (a) as a DoD Instruction in accordance with the guidance in Reference (b) and the authority in References (c) and (d).
- 1.2. Establishes policy, provides procedures, and assigns responsibilities for the Department of Defense Federal Advisory Committee Management Program in accordance with sections 102-3.5 through 102-3.185 of Reference (d), and Appendix of title 5, United States Code (U.S.C.) (Reference (e)).

2. APPLICABILITY AND SCOPE

This Instruction applies to:

2.1. The Office of the Secretary of Defense (OSD), the Military Departments (including the Coast Guard at all times, including when it is a service in the Department of Homeland Security by agreement with that Department), the Chairman of the Joint Chiefs of Staff, the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter collectively referred to as the "DoD Components"). The term

- E3.4.2.1. For Discretionary Committees, the CMO's written request shall include, at a minimum, an explanation why the Advisory Committee is essential for DoD business and is in the public interest; reasoning why the proposed Committee's functions cannot be performed by the Department of Defense, another existing Committee, or other means, such as a public hearing; and a description of the plan to attain a fairly balanced membership.
- E3.4.2.2. With regards to Non-Discretionary Committees, the CMO's written request shall include the Committee's applicable statute or Presidential Directive and provide any additional relevant materials, as necessary.
- E3.4.3. <u>Charter Filing Process</u>. Following the CMS consultation, the CMO shall use the following procedures to file the Committee's charter:
- E3.4.3.1. <u>Discretionary Committees</u>. The CMO shall submit a Federal Register notice with the OSD Federal Register Liaison Officer (FRLO) announcing the establishment of a Discretionary Committee. Once the Federal Register notice has appeared for 15-calendar days in the Federal Register, the CMO shall file the Charter with the Library of Congress and the appropriate congressional committees. At the same time the Committee's Charter is filed, the CMO shall upload a PDF copy of the Charter to the GSA's FACA Database.
- E3.4.3.2. <u>Non-Discretionary Committees</u>. The CMO shall file the Committee's Charter with the Library of Congress and the appropriate congressional committees. In addition, the CMO shall upload a PDF copy of the Charter to the GSA's FACA Database.
- E3.4.4. <u>Charter's Official Date</u>. The Charter's official date is the date that the CMO officially transmits the Charter to the Library of Congress and the appropriate congressional committees.
- E3.4.5. <u>Charter Changes or Modifications</u>. Once the Charter is filed, the Discretionary Committee may not change its mission or purpose without prior approval from the DA&M. If changes to the Committee's mission are required, the CMO, in coordination with the DoD GC, shall determine what steps are required. Non-Discretionary Committees, on the other hand, shall not change their mission or purpose unless changes are made to the statute or Executive order that established the Committee.
- E3.4.6. Renewal of Committee Charters. Charters for all DoD-Supported Committees, unless renewed by the DA&M, terminate 2 years from the date that the CMO filed the Charter.
- E3.4.6.1. The DFO shall be responsible for submitting the renewal request, and all renewal requests shall be submitted in writing no later than 90 days before the expiration date of the current Charter.

- E3.4.6.2. The DFO, in consultation with the Committee Chairperson, shall submit his or her written request through the DoD Sponsor and the CMO to the DA&M for final determination. The DoD Sponsor shall review the DFO's written request, indicating whether or not the Committee should be renewed or terminated.
- E3.4.6.2.1. If the DoD Sponsor recommends renewal of the Committee's Charter, then he or she shall, at a minimum, indicate whether or not the Committee is accomplishing its mission; provide rationale for the Committee's continued operation; specify the Committee's accomplishments with regards to the Department of Defense; explain why the Committee's operations could not be performed by existing DoD resources and/or absorbed by another existing DoD-Supported Committee; and indicate what type of impact the discontinuation of the Committee could have on the Department of Defense.
- E3.4.6.2.2. When a DoD Sponsor or designee determines that a Committee Charter shall not be renewed, then he or she shall indicate the Committee's past accomplishments regarding the Department of Defense, how soon Committee termination should occur, and whether or not legislative action is required for termination.
- E3.4.6.3. All Charter renewal requests shall be submitted to the CMO for action no later than 90 days before the current Charter expires. Failure to submit the renewal request within the prescribed timeframe may result in the Committee having to suspend its operations until the renewal request is acted upon, or the CMS determines that the Department of Defense shall reestablish the Committee.
- E3.4.6.4. If the renewal request is disapproved, then the Committee shall terminate all actions no later than its scheduled termination date unless the DA&M authorizes the Committee staff an additional period of time to close-out administrative actions pertaining to the Committee. Regardless of whether or not a Discretionary Committee is given additional time to carry out its termination, the DFO, in consultation with the CMO, shall ensure that:
- E3.4.6.4.1. All DoD personnel detailed to the Committee are returned to their parent organizations with the appropriate personnel evaluations.
- E3.4.6.4.2. All National Security Information provided to the Committee is returned to the appropriate Federal agencies or disposed of pursuant to existing statutes, Executive orders, and regulations.
- E3.4.6.4.3. The Committee's official records, pursuant to DoD policies and procedures, are archived and transferred to the National Archives and Records Administration (NARA) within 30 days of the Committee's official termination date.
- E3.4.6.4.4. All Federal government property is accounted for and disposed of pursuant to existing DoD policies and regulations and that all Federal government-leased office space is returned to the appropriate authorities.

- E3.4.6.4.5. The Committee's ACR is current and ready for CMO and CMS verification, and if appropriate, the Committee completes the Annual Closed or Partially-Closed Report.
- E3.5. Committee Member Selection and Appointment Process
- E3.5.1. <u>Committee Member Selection</u>. Individual Committee members shall be free from significant conflicts of interest to ensure that Committee members provide independent and balanced advice to the Federal government. While the CMO is not involved in the Committee

member selection or approval process, the CMO shall be immediately advised of any changes to the membership numbers or selection process that may impact the Committee's Charter.

- E3.5.2. <u>Committee Chairperson Selection Process</u>. All DoD-Supported Committees, unless otherwise prohibited by statute or Executive order, shall have a Chairperson, and the selection process shall be mentioned in the Committee's Charter. If the authorizing authority or the Committee's Charter does not indicate how the Chairperson shall be selected, then the Committee members shall select the Chairperson by majority vote.
- E3.5.3. <u>Committee Member Nominations</u>. All Committee member nominations shall be handled in a confidential manner until the nominations have been approved.
- E3.5.3.1. The DoD Sponsor, unless otherwise directed by statute or Presidential directive, shall nominate to the Secretary of Defense qualified individuals to serve as Committee members, including Federal officers and employees.
- E3.5.3.2. Any discussion with the nominee about his or her participation on the Committee shall be limited until the Secretary of Defense or designee has approved the nominee's appointment.
- E3.5.3.3. The DoD Sponsor, in developing a list of candidates, may assess the points of view of prospective candidates, including published articles, testimony, speeches, various legal forums (particularly legal testimony), research conducted on related matters, sources of funding for research and other similar activities, and interests of their employers or clients in specific areas. The DoD Sponsor may include candidates with demonstrated professional or technical qualifications when Committee membership requires technical expertise.
- E3.5.3.4. The Secretary of Defense, unless otherwise directed, shall determine the actual number of Committee members to be appointed and any special qualifications required. Once approved by the Secretary of Defense and appointed, all Committee members, unless otherwise authorized by statute or Executive order, shall serve at the discretion of the Secretary of Defense.
- E3.5.4. Committee Member Appointments and Reappointments. Once Committee member nominations are approved by the Secretary of Defense, the DoD Sponsor may proceed with the appointment process for approved Committee members. Prospective Committee members, who are not full-time or permanent part-time Federal employees, unless otherwise authorized by

Charter Renewal for the Board of Regents of the Uniformed Services University of the Health Sciences

COORDINATION

Initial/Concur	Name/Title	Date
Concur	Mr. John Baker General Counsel Uniformed Services University of the Health Sciences	10/19/2010
Concur	COL (Ret) Robert Thompson Chief of Staff, Office of the President Uniformed Services University of the Health Sciences	10/19/2010
Conch	Ms. Patricia Mulcahy Acting Director Human Capital and Resource Management	3-18-11

Concut

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3-9-11

Paul S. Koffsky

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15. Filing Date:

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Brown, Carla N CIV OSD PR

From:

O'reilly, Lenworth CIV WHS/APSD [Lenworth.O'reilly@whs.mil]

Sent: To:

Thursday, March 10, 2011 2:09 PM Brown, Carla N CIV OSD PR

Subject:

FW: Board of Regents Charter

Signed By:

lenworth.o'reilly@whs.mil

Categories:

Red Category

FYI

----Original Message----

From: McCarthy, John, Mr, DoD OGC

Sent: Wednesday, March 09, 2011 2:56 PM

To: O'reilly, Lenworth CIV WHS/APSD

Cc: Freeman, James WHS/APSD

Subject: RE: Board of Regents Charter

Len,

Reviewed and found legally sufficient.

I am curious why you included only the 4 Surgeons General listed in your comment as the "Uniformed Services" Surgeons General contemplated by the statute (U.S. Surgeon General, Army, Navy, and Air Force). Was there some other source you or Jim relied on to exclude the other "uniformed services"?

I'm not suggesting we should change the membership--I'm just looking for background in case I am asked the question.

Regards,

John

JOHN F. McCARTHY
Assistant General Counsel
Washington Headquarters Services
& Pentagon Force Protection Agency
703-693-7374
DSN 223-7374
Fax: 703-614-9727

----Original Message----

From: O'reilly, Lenworth CIV WHS/APSD [mailto:Lenworth.O'reilly@whs.mil]

Sent: Wednesday, March 09, 2011 12:39

To: McCarthy, John, Mr, DoD OGC Cc: Freeman, James WHS/APSD

Subject: FW: Board of Regents Charter

Importance: High

John,

Have you had a chance to review the Board of Regents of the Uniformed Services University of the Health Sciences charter?

If so, could you please forward and I will continue the coordination process.

Regards,

Len

----Original Message---From: Brown, Carla N CIV OSD PR
Sent: Tuesday, March 08, 2011 2:30 PM

To: O'reilly, Lenworth CIV WHS/APSD Subject: Board of Regents Charter

Importance: High

Hi Len,

Would it be possible please to return the Board of Regents charter today or tomorrow? Or do we have a status update? This one is moving up the flagpole.

Thanks much, and best regards,

Carla

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V/R,

Carla N. Brown
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Human Capital & Resource Management
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